

Appeal from decision of Nevada State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. N MC 105965 through N MC 105973.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Recordation

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file in the local office where the location notice is recorded and in the proper office of the Bureau of Land Management a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

2. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official.

In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

3. Administrative Procedure: Adjudication -- Evidence: Generally --Evidence: Presumptions -- Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Abandonment

Although at common law, abandonment of a mining claim can be established only by evidence demonstrating that it was the claimant's intention to abandon it and that he in fact did so, in enacting the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), Congress specifically placed the burden on the claimant to show, by his compliance with the Act's requirements, that the claim has not been abandoned and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon his claim may not be considered.

4. Notice: Generally -- Regulations: Generally -- Statutes

All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations.

APPEARANCES: Robert W. Hughes, president, Hughes Minerals, Inc.

#### OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Hughes Minerals, Inc., appeals the decision of the Nevada State Office, Bureau of Land Management (BLM), dated February 16, 1983, which declared the unpatented Harmony, Meta, Nemisis, Nemisis #1 and #2, Florence, Florence #1, and Isaac #1 and #2 lode mining claims, N MC 105965 through N MC 105973, abandoned and void for failure to file on or before December 30, 1980, and December 30, 1981, evidence of performance of annual assessment work or a notice of intention to hold the claims, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2.

Appellant states that it has complied with all requirements of the mining laws. It has never had any intention to abandon these claims, and it has done and recorded the annual assessment work each year in White Pine County, Nevada. Copies of the proofs of labor for the claims, as recorded in White Pine County, Nevada, September 11, 1980, and September 1, 1981, accompanied the appeal. Appellant believes that a copy of each proof of labor was transmitted timely to BLM.

[1] Under section 314(a) of FLPMA, the owner of a mining claim located on or before October 21, 1976, must file notice of intention to hold the claim or evidence of the performance of annual assessment work on the claim in the local state office where the location notice is recorded and in the proper office of BLM by October 22, 1979, and on or before December 30 of every calendar year thereafter. This requirement is mandatory, and not discretionary, and failure to comply is conclusively deemed to constitute an abandonment of the claim by the owner and renders the claim void. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981); James V. Brady, 51 IBLA 361 (1980).

[2, 3] The Board responded to arguments similar to those presented here in Lynn Keith, *supra*. With respect to the conclusive presumption of abandonment and appellant's argument that the intent not to abandon was manifest, we stated:

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself, and would operate even without the regulations. See Northwest Citizens for Wilderness Mining Co., Inc. v. Bureau of Land Management, Civ. No. 78-46 M (D. Mont. June 19, 1979). A matter of law, the conclusive presumption is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary of the Interior with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences. Thomas F. Byron, 52 IBLA 49 (1981).

\* \* \* Appellant also argues that the intention not to abandon these claims was apparent \* \* \*. At common law, evidence of the abandonment of a mining claim would have to establish that it was the claimant's intention to abandon and that he in fact did so. Farrell v. Lockhart, 210 U.S. 142 (1908); 1 Am. Jur. 2d, Abandoned Property §§ 13, 16 (1962). Almost any evidence tending to show to the contrary would be admissible. Here, however, in enacted legislation, the Congress has specifically placed the burden on the claimant to show that the claim has not been abandoned by complying with the requirements of the Act, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon may not be considered. [Emphasis in original.]

53 IBLA at 196-97, 88 I.D. at 371-72.

[4] Those who deal with the Government are presumed to have knowledge of the law and the regulations duly promulgated pursuant thereto. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); Donald H. Little, 37 IBLA 1 (1978); 44 U.S.C. §§ 1507, 1510 (1976). The responsibility for complying with the recordation requirements of the statute rested with appellant.

Although appellant suggests that the documents were actually mailed to BLM, the regulations define "file" to mean "being received and date stamped by the proper BLM office." 43 CFR 1821.2-2(f); 43 CFR 3833.1-2(a). Thus, even if there was loss of the envelopes containing evidence of assessment work by the Postal Service, that fact would not excuse appellant's failure to comply with the cited regulations. Regina McMahon, 56 IBLA 372 (1981); Everett Yount, 46 IBLA 74 (1980). Filing is accomplished only when a document is delivered to and received by the proper BLM office. Depositing a document in the mails does not constitute filing. 43 CFR 1821.2-2(f). The filing requirement is imposed by statute, and this Board has no authority to waive it. Lynn Keith, *supra*.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques  
Administrative Judge

We concur:

C. Randall Grant, Jr.  
Administrative Judge

Anne Poindexter Lewis  
Administrative Judge

